

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) 3:06-cv-00101-HDM-RAM
)
Plaintiff,)
) ORDER
vs.)
)
ALLEN HENRY BONNIFIELD, et al.,)
)
Defendants.)
_____)

On April 28, 2011, defendants Allen Henry Bonnifield and Patricia Bonnifield filed a motion for relief from final judgment pursuant to Federal Rule of Civil Procedure 60(b) (#63).¹ Under Rule 60(b), "the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud . . . , misrepresentation, or misconduct by an opposing party;

¹ Although pursuant to the document's caption the motion was filed by the clerk as a "notice," it is properly construed as a Rule 60(b) motion.

1 (4) the judgment is void;

2 (5) the judgment has been satisfied, released or
3 discharged; it is based on an earlier judgment
4 that has been reversed or vacated; or applying it
prospectively is no longer equitable; or

5 (6) any other reason that justifies relief.

6 Rule 60(b) motions must be filed within a "reasonable time,"
7 and if the asserted basis is one of the first three listed reasons,
8 no later than one year after the entry of the judgment or order.
9 Fed. R. Civ. P. 60(c)(1). Defendants' motion for relief is based
10 on Rules 60(b)(3) and 60(b)(4).

11 Final judgment was entered against Allen Henry Bonnifield on
12 April 11, 2007. It was not until more than four years later that he
13 filed his Rule 60(b) motion. The motion for relief pursuant to
14 Rule 60(b)(3), filed more than a year after entry of judgment, is
15 thus untimely. In addition, the court finds that the motion for
16 relief pursuant to Rule 60(b)(4) was not brought within a
17 reasonable time. The defendant has provided no justification for
18 waiting four years to move this court for relief based on his
19 belief that the judgment against him is void. Accordingly, Allen
20 Henry Bonnifield's motion for relief from final judgment pursuant
21 to Rule 60(b) is hereby denied as untimely. Even if the motion
22 were timely, however, there is no basis in either defendants'
23 motion or the record for declaring the judgment void or for finding
24 that the plaintiff committed fraud. Thus, the motion is also
denied as frivolous and without merit.

25 Insofar as Patricia Bonnifield is concerned, no judgment has
26 been entered against her in this case. Rather, on February 8,
27 2007, the court granted the parties' stipulation to dismiss her
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1 with prejudice. In that order, the court retained jurisdiction
2 over the matter for one year in order to enforce the settlement
3 agreement. For the same reasons as above, Patricia Bonnifield's
4 Rule 60(b) motion is untimely. Even if it were timely, however,
5 the motion is without merit. No judgment has been entered against
6 Patricia Bonnifield from which she can be relieved. To the extent
7 she is seeking relief from the February 8, 2007, order of
8 dismissal, it is unclear what relief could possibly be granted.
9 Patricia Bonnifield has been dismissed from this action without
10 prejudice, which is to her benefit. Moreover, the time period for
11 the court to retain jurisdiction over the settlement agreement has
12 long since expired. Accordingly, Patricia Bonnifield's Rule 60(b)
13 motion is also denied as untimely, frivolous, and without merit.

14 Finally, the defendants include in their motion a "claim for
15 damages." There is no basis for the award of any damages to the
16 defendants in this case.

17 In accordance with the foregoing, defendants' motion for
18 relief from final judgment or order (#63) is hereby **DENIED**.

19 **IT IS SO ORDERED.**

20 DATED: This 3rd day of May, 2011.

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23 UNITED STATES DISTRICT JUDGE
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